

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION Nos.18178 and 18164 of 2000

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Date: 01.08.2007
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WRIT PETITION No.18178 of 2000

Between:

Taherunnisa Begum, W/o. S. Ghouse Mohiddin

..... PETITIONER

AND

1. The District Collector, Kadapa and another.

.....RESPONDENTS

WRIT PETITION No.18164 of 2000

Between:

Shaik Shirajuddin, S/o. S. Ghouse Mohiddin

..... PETITIONER

AND

1. The District Collector, Kadapa and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION Nos.18178 and 18164 of 2000

COMMON ORDER:

Since these two writ petitions are arising out of identical issues, they are heard together and are being disposed of by this common order.

The petitioner in W.P.No.18164 of 2000 is the son and the petitioner in W.P.No.18178 of 2000 is the wife of Ghouse Mohiddin, who was declared as revenue defaulter. They call in question the attachment of their houses by the respondents for due recovery of the amount payable by the revenue defaulter under the Revenue Recovery Act, 1864 (for short 'the Act').

According to the petitioner in W.P.No.18178 of 2000, she purchased the house bearing D.No.7/264-A situated at Ravindra Nagar, Kadapa under a registered sale deed, dated 07.10.1989, for a consideration of Rs.21,200/- from one Shaik Ghouse Peera. While so, the Mandal Revenue Officer issued a notice in Ref./L740/98, dated 16.07.1999, to her husband stating that while he was working as Sub Treasury Officer he misappropriated an amount of Rs.52,88,390/- and called upon him to pay the said amount. It is also stated that the second respondent issued the notice of attachment and published the same in the District Gazette on 17.08.2000. On coming to know about the same, she submitted a detailed explanation stating that the said house was purchased by her from her own income, and therefore, the same cannot

be attached for the alleged amounts due by her husband. It is also stated that she came to know that the first respondent is taking steps to put the said house to auction for realization of the amount alleged to have been misappropriated by her husband. Challenging the same, she filed the above writ petition.

According to the petitioner in W.P.No.18164 of 2000, he purchased the house bearing D.No.24/24 situated at Gandhi Road, Proddatur, Kadapa District, under a registered sale deed, dated 10.11.1992 from its lawful owner Mallela Mahamood for a consideration of Rs.1,12,000/-. While so, the second respondent affixed a notice under Section 27 of the Act to his house stating that the house has been attached to recover the amounts alleged to have been misappropriated by his father. Hence, he got issued a legal notice to the District Collector, Kadapa and the Mandal Revenue Officer, Proddatur through his Advocate on 24.07.1999 claiming that previously he worked at Saudi Arabia during 1988-91 and on his returning to India he purchased the schedule house from its lawful owners out of his own savings and that the said property cannot be a subject matter of attachment for recovery of the amounts due by his father. In response to the said notice, the District Collector, Kadapa, the first respondent herein issued a reply *vide* Ref.No.D1/5175/95, dated 17.11.1999, stating that the schedule house has been purchased by the petitioner when he was in joint family; that the Government Pleader, Kadapa opined that the sale deed executed in favour of the petitioner is with a *mala fide* intention for misleading the Government and so he advised to attach the said house under the Act. As such, the second respondent issued the demand notice in Form-4, under Section 25 of the Act and affixed the same on the house of the petitioner. After expiry of 15 days time, Form-5 under Section 27 of the Act was also affixed on the doors, as the same could not be served on

the delinquent. Hence, the action initiated under the Act to effect recovery of embezzled government money of Rs.52,88,390/- is proper and there is no merit in the pleadings of the petitioner to stop further proceedings under the Act. Questioning the same, the writ petition is filed.

In response to Rule Nisi issued, the Mandal Revenue Officer, Proddatur filed a counter affidavit in W.P.No.18164 of 2000 stating that he issued D1 Notice under Section 3 of the Act on 24.01.1994 to revenue defaulter for payment of amount due to the tune of Rs.52,88,390/- fixing the time limit upto 04.02.1994. As the defaulter failed to pay the amount within the time allowed, he recovered the movable properties namely one Konark Rainbow Delux Colour Television, one National Panasonic Two-in-one Tape Recorder and one Ajantha Time Piece, total worth Rs.14,500/- and for recovery of the balance amount, enquiries were made to know about the immovable properties, if any, hold by the defaulter. During the course of enquiry, it was revealed that a house bearing D.No.24/24 in Vasanthapeta Street, Proddatur stands in the name of son of the defaulter and the same was procured by the defaulter and got registered in the name of his son as both were living together jointly at the time of procurement of the said house. It is further stated that though the said property stands in the name of the son of the defaulter by way of registered sale deed, it was actually possessed by the defaulter and kept in the name of his son. Therefore, the said property was attached after following the due procedure.

Similar stand is taken by the respondents in the counter affidavit filed in W.P.No.18178 of 2000.

Smt. K. Lalitha, representing Sri O.Manohar Reddy, learned

counsel for the petitioner, has not put up any substantial argument except stating that the petitioners are the owners of the schedule properties, and the same were purchased by them under separate registered sale deeds, and therefore, the same cannot be attached under the Act for recovery of the alleged due amount by the defaulter.

The learned Government Pleader for Revenue reiterated the averments made in the counter affidavits that due procedure has been followed before attaching the said properties.

In the light of the above submissions the point that arises for consideration is whether the property of third parties, who are not the revenue defaulters, can be attached for due recovery of the sum due by revenue defaulter.

Section 5 of the Act authorizes the Collector to recover the arrears of revenue together with interest and costs of process, by the sale of defaulter's movable and immovable property or by execution against the person of defaulter in manner provided under Sections 8 to 14 of the Act.

Section 52 of the Act envisages recovery of arrears of revenue other than land revenue due to the State Government and all sums due to the State Government including compensation for any loss or damage sustained by them in consequence of a breach of contract, may be recovered in the same manner as arrears of land revenue under the provisions of the Act, unless the recovery thereof shall have been or may hereafter be otherwise specifically provided for.

Section 52-B of the Act empowers the Collector to recover the dues from the persons from whom money is due to the defaulter.

Section 59 of the Act provides for filing of the suit by the persons aggrieved by any proceedings under the Act, if it is filed within six months from the date of any proceedings initiated against them.

The Andhra Pradesh Board of Revenue Standing Orders (BSO) 41 prescribes the procedure for the sale of distrained property and attachment and sale of the movable and immovable properties of the defaulter.

BSO 43 prescribes sale of land already alienated by the defaulter in favour of other parties. Whereas, BSO 44 prescribes the procedure in case of doubtful ownership of land, which reads as under:

“Collectors can, at their option, proceed against the defaulter’s personal or real property. The right course, therefore, when the ownership of land is disputed or doubtful, is to attach and, if necessary, sell the land on which the arrear is due, regarding the liability of which whoever the owner may be, there can be no question. The same course should be followed in realizing the quit rent upon enfranchised inams when the ownership of the property is doubtful.”

This Court in ***B.C.Mulajkar v. Govt. of Andhra Pradesh represented by its Secretary, Industries & Commerce Department***^[1] held that where there are disputes between alleged debtor and Government with regard to certain liability, before initiating recovery proceedings under Section 52 it is obligatory on the part of the State Government to hold a proper enquiry, furnish full particulars to person sought to be fastened with the liability, consider his representations and first determine liability or otherwise for the sums said to be due.

In the said judgment, this Court further held as follows:

“..... It is an elementary principle that

principles of natural justice require that the person who is sought to be fastened with a liability should first be apprised of the facts on which the liability is sought to be based and he should be given an opportunity to make his representations in that behalf. In our view the expression "sums due" does imply an obligation on the part of the State Government when the liability is disputed, to hold a proper enquiry and furnish the person from whom the amount is sought to be recovered, the full particulars or facts, hold an enquiry, consider the representations and first determine the liability or otherwise for the sum said to be due.

..... But Section 52 of the Act which is a special provision and which enables the Government to recover the amounts as arrears of land revenue, is a drastic provision and presumably this provision is made in the interests of expeditious collection of the amounts due to the Government. Even so, the provisions of Section 52 of Act have to be interpreted in such a manner so as to accord with the principles of natural justice and that the party sought to be proceeded against should at least have the minimum safeguard of having an opportunity to know the basis and the material on which the liability is sought to be imposed upon him and to rebut the same by placing the necessary material in that behalf before the appropriate authority of the Government.

.....In our opinion therefore before the Government could recover the sums due under Section 52 of the Act, the appellant should be furnished with the relevant material on which the amount is said to be due, and give an opportunity to the appellant to make his representations and produce the relevant material to substantiate his representations and thereafter determine the liability. Only on such determination of the liability and the amount due thereunder, the Government can take proceedings under Section 52 of the Act for recovering the amount.

In other words the recovery proceedings under Section 52 of the Act should be preceded by an anterior determination of the liability and the amount due towards such liability.”

In **B.Kameswaramma v. Tahsildar, Tenali**^[2], Justice O.Chinnappa Reddy (as he then was) held that it is not open to the Tahsildar to attach property, which did not stand in the defaulters name.

This Court in **Kalimili Radhakrishnaiah v. The Govt. of Andhra Pradesh**^[3] held that Section 5 of the Act empowers the Collector or any other officer empowered by him in that behalf to proceed against property belonging to a defaulter alone. It was also held that even assuming for a moment that if a person was in the position of a trustee and the state of a beneficiary, it would still not render the sale valid if it is not made in accordance with the requirement of the Act and that the person to whom loan was advanced for sinking the well alone but not a third party can be regarded as the defaulter for the purpose of the Act. This Court further held as follows:

“Section 5 of the Act itself gives an indication of the meaning of “defaulter” though this term has not been defined in the Act as it provided for steps to be taken for the recovery of arrears of revenue by proceeding against movable or immovable properties of the defaulters. Almost every one of the relevant sections in the Act refers to defaulter alone and not to the persons other than the defaulter. If it is proposed to recover the amount from the plaintiff on the ground that he has taken over all the liabilities of the family, the proper remedy, if any, would be to file a civil suit against him but in no event property admittedly belonging to him could be validly attached and sold under the Act for realization of arrears due from Sankaraiah who alone is the defaulter in this case.”

Sri Rajamannar, Chief Justice of Madras High Court, speaking for the Bench in **C. Dhanalakshmi Ammal v. Income Tax Officer,**

II Additional City Circle II, Kilpauk, Madras^[4], after referring to **Zamorin of Calicut v. Sitarama**^[5] and **Sampath v. Rajah of Venkatagiri**^[6], observed as under:

“We agree with Mr.Nambiar that there is no provision in the Madras Revenue Recovery Act which enables the Collector to attach and sell land not registered in the defaulter’s name for arrears of revenue due from the defaulter. In Padhmanabha v. Visalakshmi, AIR 1938 Mad 283 (E), it was pointed out, though in another connection, that it would not be competent to the Collector to go into the question of benami.”

Further in paragraph No.11 of the said judgment, it was held that the Collector, acting merely under the Madras Revenue Recovery Act, has no power to attach and sell property registered in the name of any one other than the defaulter.

The Supreme Court in **Chogmal Bhandari v. Deputy Commercial Tax Officer II Division, Kurnool**^[7] held that the Sales Tax Authorities under Section 17 of the Andhra Pradesh General Sales Tax Act can only determine the jurisdictional facts and cannot proceed beyond that. The Supreme Court further held as under:

“In the special and peculiar facts of the present case which have been catalogued above, in our opinion, this is not a fit case in which the sales tax authorities can be allowed to hold that the deed of trust executed by the settlors was hit by Section 53 of the Transfer of Property Act. It may be noted that under Section 53 of the Transfer of Property Act if a transfer is made with intent to defeat or delay the creditors it

is not void but only voidable. If the transfer is voidable, then the sales tax authorities cannot ignore or disregard it but have to get it set aside through a properly constituted suit after impleading necessary parties and praying for the desired relief.”

The Supreme Court in **S.K.Bhargava v. Collector, Chandigarh**^[8] categorically held that the very use of the words ‘determine’ and ‘sum due’ implies that there may be a *lis* between the parties and they have to be heard before a final conclusion is arrived at by the Managing Director. It is not a mere claim of the Corporation, which is forwarded to the Collector for realization, but it is the ‘sum due’ as determined by the Managing Director which alone is recoverable. The said determination cannot be done without notice to the alleged defaulter.

The averments made in the counter-affidavit clearly go to show that for recovery of the amount due by S. Ghouse Mohiddin, the revenue defaulter, who worked as Sub-Treasury Officer, enquiries were made to know the immovable properties, if any, hold by him. During the course of enquiry, it was revealed that the above said houses are standing in the name of his son and wife and that the said properties were procured by the defaulter and got registered in the name of his wife and son when they were living together jointly. Hence, the said properties were attached for recovery of the amount due by the defaulter. It is nowhere stated that the said properties were purchased in the name of the son and wife of the revenue defaulter from out of the amount misappropriated by him or from his own amount. Therefore, the same cannot be treated as the properties hold by the revenue defaulter. Any reasoned order as such is not passed to enable the petitioners to challenge the same before the appropriate Forum as contemplated under Section 59 of the

Act.

In the absence of such reasoned order, mere enquiry conducted by the authorities unilaterally and coming to a conclusion that the properties owned by the petitioners were purchased by the revenue defaulter, cannot enure to the benefit of the respondents authorizing them to attach the said properties without following the due procedure as held by this Court as well as the Supreme Court in the cases referred to supra. Unless the respondents obtain necessary declaration from the competent Court that the said properties were purchased by the revenue defaulter in the name of the petitioners' benami, they cannot proceed with the attachment of the properties.

Admittedly, the petitioners are not the revenue defaulters. Therefore, their properties cannot be a subject matter of adjudication or sale, without determining their liability to pay the said amount or that the said properties were purchased by the revenue defaulter in their name benami. In the absence of the same, the impugned order, dated 17.11.1999, passed by the Collector, Kadapa and the Gazette Notification, dated 17.08.2000, attaching the properties of the petitioners, cannot be sustainable and the same are accordingly quashed. However, this order shall not preclude the respondents to proceed in the manner authorized under the Act or any other law, if they are so advised.

The Writ Petitions are accordingly allowed making the rule nisi absolute. No costs.

A. GOPAL REDDY, J

Date: 01.08.2007

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Note: L.R. Copy to be marked

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- [1] AIR 1971 ANDHRA PRADESH 169
- [2] 1975 (2) APLJ 26
- [3] AIR 1979 ANDHRA PRADESH 255
- [4] (S) AIR 1957 MADRAS 376 (V 44 C 114 June)
- [5] ILR 7 Mad 405 (B)
- [6] AIR 1931 Mad 51(C)
- [7] AIR 1976 SUPREME COURT 656
- [8] AIR 1998 SUPREME COURT 2885